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CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 529

NATIONAL LABOR RELATIONS BOARD

vs.

WHITE SWAN COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

FILED OCTOBER 28, 1940

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1 In the United States Circuit Court of Appeals, Fourth Circuit

No. 4666

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

WHITE SWAN COMPANY, RESPONDENT

On Petition for Enforcement of an Order of the National Labor Relations Board

Question certified to the Supreme Court of the United States by the Circuit Court of Appeals of the Fourth Circuit on the case stated.

Statement of facts

This is a petition for enforcement of an order of the National Labor Relations Board, which directed the White Swan Company, a corporation of Wheeling, West Virginia, engaged in the operation of a laundry and dry cleaning business, to cease and desist from certain unfair labor practices and to offer employment with back pay to certain employees held to have been discharged because of union affiliation and activities. The findings of the Board with respect to the unfair labor practices and discriminatory discharge of employees are sustained by substantial evidence; but a question has arisen, as to which the members of the Court are divided and in doubt, with respect to the jurisdiction of the Board in the premises.

The respondent, White Swan Company, operates a combined laundry and dry cleaning establishment in the city of Wheeling, West Virginia. While certain of its supplies are
2 obtained from without the state, the volume of the interstate business thus involved is not sufficient, in our opinion, to bring the business within the jurisdiction of the Board. The record shows that these supplies consist of soap, bluing, bleach, solvent, coal, water, paper, tape and padding, and that respondent's purchases thereof during 1938 amounted to $38,333.15, of which $10,810.90 came from without the state. Respondent, however, operates delivery trucks in Ohio as well as in West Virginia, three of the delivery routes from its plant being in Ohio and eleven in West Virginia. The business involved is necessarily of a purely local character, as the record shows that a radius of fifteen miles is the practical limit for a

laundry or dry-cleaning business in this territory. The fact that business is done in Ohio outside the state in which respondent's laundry is located, results from the fact that this purely local business is located in a city on a state line. Respondent transports garments in its trucks from those of its customers who reside in Ohio to its plant in West Virginia to be serviced, and then after servicing returns the garments in its trucks to the customers. Approximately 12.93 per cent of its gross income for 1938 was derived from this source. In addition thereto, approximately 5 per cent of its gross income during 1938 was derived from the servicing of garments which persons not in its employment collected in Ohio, brought to its plant for servicing and delivered in Ohio after they had been serviced. Respondent's total gross income in 1938 was $128,752.96. The total income from the business obtained from persons in Ohio during this period was $28,088.43.

We recognize that the collection and delivery of garments across state lines, as above described, constitutes interstate commerce. We are advertant, however, to the admonition of the court that in applying the act we are to bear in mind "the distinction between what is national and what is local in the activities of commerce." N. L. R. B. v. Jones & Laughlin (301 U. S. 1, 30). And although the letter of the National Labor Relations Act may cover such collections and deliveries in interstate commerce as are here involved, the question arises whether a proper interpretation of the Act, in view of the intent of Congress, would include them. Cf. United States v. Sorrells, 287 U. S. 435, 446. We are divided and in doubt as to whether such collection and delivery, which results from the fact that business of a local character, such as a laundry, is located on a state line, is sufficient to bring such business within the jurisdiction of the Board under the National Labor Relations Act. To so hold would be to bring under the jurisdiction of the Board a great variety of businesses of purely local character simply because they maintain a delivery service in cities located on state lines. As there are many such cities in the United States, the question seems to us one of sufficient importance to justify us in certifying it to the Supreme Court so that it may be definitely settled.

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Being divided and in doubt, therefore, this Court respectfully certifies to the Supreme Court of the United States, for its instruction and advice, the following questions of law, the determination of which is indispensable to a proper decision of the case.

Questions

1. Should the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located in a city on a state line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a state other than that in which the business is located?

2. Where a local business, such as a laundry, is located in a city on a state line, and is not engaged in interstate commerce, except in so far as it may collect articles to be serviced and may make deliveries to customers living across the state line, is such business, by reason of such collections and deliveries,
4 deemed engaged in "commerce" within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6), so that an unfair labor practice on its part would be an unfair labor practice "affecting commerce" within the meaning of Subsection 7 of said section (29 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?

JOHN J. PARKER,
U. S. Circuit Judge.

MORRIS A. SOPER,
U. S. Circuit Judge.

ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

[Endorsed:] Filed and Entered October 26, 1940. Claude M. Dean, Clerk, U. S. Circuit Court of Appeals, Fourth Circuit.

6 [Clerk's certificate to foregoing paper omitted in printing.]

[Endorsement on cover:] Certificate. File No. 44878. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 529. National Labor Relations Board vs. White Swan Company. Filed October 28, 1940. Term No. 529 O. T. 1940.

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IN UNITED STATES CIRCUIT COURT OF APPEALS, FOURTH CIRCUIT

No. 4666

NATIONAL LABOR RELATIONS BOARD, PETITIONER

versus

WHITE SWAN COMPANY, RESPONDENT

Order denying amendment of certificate

A motion has been made by the Solicitor General that this Court amend the certificate heretofore made to the Supreme Court of the United States by certifying to that Court a question which would embody the purchase of a portion of its supplies in interstate commerce as well as the fact that it derives a substantial portion of its income from business which involves collections and deliveries in interstate commerce. We are clearly of opinion, however, as stated in our certificate, that the volume of interstate business involved in the purchase of supplies is not sufficient to bring the business of respondent within the jurisdiction of the Board. And, if it be held that the fact that respondent derives a substantial portion of its income from business which involves collections and deliveries in a state other than that in which the business is located does not confer jurisdiction on the Board under the Act, we are of opinion that the Board was without jurisdiction. The amount of income derived from the business involving such collections and deliveries is undoubtedly a substantial amount of the income of respondent however; and our doubt is concerned with the nature of the business involved in the collections and deliveries and the application of the Act thereto, not as to the substantial nature of the income derived therefrom. The only questions as to which we are divided and need instruction and advice are those which we have certified. When these are answered we can proceed to decide the case.

Adding to the question the element involved in the purchase of supplies would confuse the question as to which instruction is desired and would not aid in its solution. If the business of collecting and delivering articles in the manner stated in the questions brings the business of respondent within the Board's jurisdiction, the purchase of supplies does not increase the juris-

diction: if it does not, such purchase, in our opinion, cannot confer jurisdiction. The case is not one of aggregating different elements upon which a finding of jurisdiction may be based; but of determining whether one of the elements tends to furnish any basis of jurisdiction.

Nothwithstanding what we have said above, we would certify the question suggested by the Solicitor General, but for the fact that to do so would be to certify to the Supreme Court the entire jurisdictional feature of the case before us and ask the Court's decision on that feature of the case. This we may not do. We have certified the facts. We have asked advice as to the only question upon which we entertain doubt. If the Court prefers to pass upont he case before us as embodied in the question proposed by the Solicitor General, it has full power to bring the case before it by certiorari.

For the reasons stated the motion to amend the certificate will be denied.

Done at Charlotte, N. C., January 10, 1941.

JOHN J. PARKER,
U. S. Circuit Judge.
MORRIS A. SOPER,
U. S. Circuit Judge.
ARMISTEAD M. DOBIE,
U. S. Circuit Judge.

A true copy.
Teste:
[SEAL]
CLAUDE M. DEAN, *Clerk,*
U. S. Circuit Court of Appeals, Fourth Circuit.

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